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CUSTOMS. EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
SINGLE MEMBER APPEAL BRANCH

Date 23/06/2009

Appeal No. E/931 /2007 – SM[BR] E/CO/138/2007 –SM[BR]

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
C.C.E. DELHI III
UDYOG MINAR, UDYOG VIHAR, VANIJYA NIKUNJ,
PHASE V, GURGAON - 122016 (HARYANA) Appellant
C.C.E. DELHI III Vs
Respondent
M/S PUNIA UDYOG

I am directed to transmit herewith a certified copy of **Final order No.** 622 / 2009 –SM[BR] dated 5.6.2009 passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(SM Appeal Branch)

Copy to :

1. Respondent
   M/S PUNIA UDYOG
   DELHI ROAD, REWARI, HARYANA.
2. Adv. / Consult SHRI C.D. BANGA
   H.NO.15,SECTOR-16, FARIDABAD[H.R.]

3 S.D.R
~~4 J.C.D.R.~~
5 Bar association. CESTAT. New Delhi
6 Director Publications. Customs. Excise. I.P. Estate. New Delhi
7 M/s Centax Publictions Pvt Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New Delhi - 3
8 Commercial Laws of India Pvt Ltd. Post Bag No. 1033, No.2(Old No. 36), Vaithyaram Street, T. Nagar,Chennai -17
9 Raghuraman's 44-B. Regal Flat.Shipra Suncity. Indirapuram - 201010.Ghaziabad. DT. U.P.
10 M/s Manupatra Information Solutions Pvt Ltd. Excise & Customs Cases B-37, Sector - 1, Noida - 201301, Gautam Budh Nagar, (UP)
11 M/s. Deeparchie Publications. M-93. Marg. 46. Saket. New Delhi 110017
12 Taxindiaonline.com Pvt.Ltd. B-XI/8183.Vasant Kunj. New Delhi - 110070
13 Taxmann Allied Service Pvt Ltd.. 21/35. West Punjabi Bagh. New Delhi - 110026
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A.Iscon Mall.Above Star India Bazar.Satellite Road.Ahmedabad-15
15 LAWCRUX Advisors Pvt Ltd. LAW House.1-8.Sector - 10. Faridabad 121003 (Haryana)
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Assistant Registrar
(SM Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, NEW DELHI, PRINCIPAL BENCH NEW DELHI

Appeal No.E/931 of 2007 with
E/CO/138 of 2007-SM (BR)

[Arising out of Order-in-Appeal No. 2004 passed by the Commissioner of Central Excise (Appeals), Chandigarh]

Date of Hearing/ Decision:1.6.2009

For approval and signature:

Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see CESTAT (Procedure) Rules, 1982.		
2.	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	:	No
3.	Whether Their Lordships wish to see the fair copy of the Order?	:	
4.	Whether Order is to be circulated to the Departmental authorities?	:	Yes

CCE, Delhi-III ...Appellants

[Rep. by Shri S.K. Bhaskar, DR]

Vs.

Punia Udyog ...Respondent

[Rep. by Shri C.D. Banga, Consultant]

CORAM: **Hon'ble Mr. P.K. Das, Member (Judicial)**

Final Order No. 622 / 09 - SM (BR) /Dated:05.06.2009

Per P.K. Das:

Revenue filed this appeal against the Order of the Commissioner (Appeals), whereby Adjudication Order was set aside.

2. The relevant facts of the case, in brief, are that the respondent is engaged in the manufacture of Zinc Oxide availing Modvat facility. The Central Excise Officers, during investigation, against one Shri R.K. Gupta and three concerns namely M/s. R.K. Enterprises, M/s. Hindustan Metal and M/s. United India Company, it was found that the registered dealer issued central excise invoice without supplying the goods. A show cause notice dated 4.8.2004 was issued to the respondent along with Shri R.K. Gupta and M/s. R.K. Enterprises proposing to disallow the credit of Rs.1,39,463/- and to impose penalty to the respondent and other noticees. The Original Authority disallowed the Cenvat credit of Rs.1,39,463/- and imposed penalty of equal amount along with interest on the respondent and other noticees. The Commissioner (Appeals) set aside the Adjudication Order. Hence, the Revenue filed this appeal against the respondent.

3. After hearing both the sides, I find that the entire case was made out on the basis of statement of the registered dealer, Shri R.K. Gupta and the transporters. It appears that Shri R.K. Gupta, registered dealer, issued the invoices to various dealers and manufacturers to avail Cenvat Credit. It is seen that several proceedings were initiated against various dealers and manufacturers on the basis of the statement of Shri R.K. Gupta.

4. In this context, ld. Consultant submits that the Division Bench of the Tribunal in the case of Garima Enterprises (P) Ltd. Vs. CCE, Delhi-IV reported in 2005 (182) ELT 106 (Tribunal-Delhi) allowed the credit,

wherein consignments are 6 M.T. or less relying the statement of Shri R.K. Gupta. For the proper appreciation of the case, the relevant portion of the decision of the Tribunal in the case of M/s. Garima Enterprises (P) Ltd. (supra) is reproduced below:-

> " The entire case of the Department is mainly based on the statement of Shri R.K. Gupta, Proprietor of M/s. R.K. Enterprises and dealer of appellant. The statement reveals that besides issuing bogus modvatable invoices, he was also issuing genuine invoices where the goods were actually supplied to the customers. This statement nowhere specifically mentions that the invoices issued in the name of the appellants were bogus. The Revenue has also not rebutted the submissions made by the appellants that they have never received any invoice for more than 6 tons and as such even as per statement of Shri R.K. Gupta, the supply to the appellants were not bugus as bogus invoices were issued only for quantity for more than 6 tons. The Revenue has also not controverted the convention of the appellants that they were sending the copper rods to their job workers for conversion and paying the conversion charges to the job worker. The Revenue has thus not succeeded in establishing that appellants did not receive the raw materials and received only modvatable invoices. Therefore, Modvat credit is admissible."

5. I find that the present case is also made out on the basis of the statement of Shri R.K. Gupta. It is noted that the Division Bench of the Tribunal allowed credit on the consignment of 6 M.T. or less.

6. In this connection, ld. DR drew the attention of the Bench to the Annexure to the show cause notice, wherein it was mentioned that the

consignments are 5068 Kgs. and 7805 Kgs. involving Modvat credit of Rs.54,650/- and Rs.84,811 respectively.

7. Respectfully following the decision of the Division Bench of the Tribunal in the case of Garima Enterprises (P) Ltd. (supra), I find that the respondent is eligible for the credit for consignment of 5068 Kgs.

8. In view of the above discussion, the order of the Commissioner (Appeals) is modified insofar as demand of the credit of Rs.84,811/- relating to consignment of more than 6 M.T. is upheld. Regarding imposition of penalty, I find that the respondent deposited this amount before issue of show cause notice. Therefore, in terms of 1st proviso of Section 11 AC of the Central excise Act, 1944, penalty should be 25% of the duty (i.e. Rs.21,000/-). The appeal is allowed in the above terms. Cross objection is disposed of.

Order dictated & pronounced in open court on 5.6.2009.

(P.K. Das)
Member (Judicial)

Ckp.